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DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/01/2021

U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

December 1, 2021

MEMO ENDORSED

VIA ECF

Hon. Valerie E. Caproni
United States District Judge
United States District Court
40 Foley Square
New York, New York 10007

Re: *Belem, et al. v. Renaud, et al.*, No. 21 Civ. 4093 (VEC)

Dear Judge Caproni:

This Office represents the government in this action in which the plaintiffs have filed an amended complaint challenging the denial of their Application to Register Permanent Residence or to Adjust Status (Form I-485) by U.S. Citizenship and Immigration Services (“USCIS”). On behalf of both sides, I write respectfully to request that the Court adjourn *sine die* the initial pretrial conference now scheduled for December 10, 2021, along with the filing requirements attendant thereto, while the parties brief and the Court considers the government’s forthcoming motion to dismiss. *See* ECF Nos. 16, 35.

By way of background, plaintiffs initially brought this action in May 2021 seeking to compel USCIS to adjudicate their Petition for Alien Relative (Form I-130) and Form I-485, which they asserted were unreasonably delayed. *See* ECF No. 1. USCIS approved the Form I-130 in July 2021, *see* ECF No. 27, but denied the Form I-485 in a September 22, 2021 decision. In October 2021, Plaintiffs requested and obtained leave of the Court to file an amended complaint challenging the denial decision. *See* ECF Nos. 31-33. In November 2021, the Department of Homeland Security issued a Notice to Appear, the document used to commence removal proceedings, to plaintiff Sid Abass Belem. In its motion, the government will argue that, under Second Circuit precedent, Belem must now exhaust his administrative remedies by seeking to adjust status in immigration court, which has exclusive jurisdiction over the issue during the pendency of removal proceedings, and thus the Court should dismiss this case.

Plaintiffs’ counsel has provided the following paragraph for inclusion in this letter:

“Plaintiff disagrees with Defendants’ position that the Immigration Court has exclusive jurisdiction of this matter. The Immigration Court has exclusive jurisdiction with respect to Plaintiff’s removability. However, this matter is regarding USCIS’ unlawful denial of his I-485 Application. Plaintiff has exhausted all administrative remedies with respect to the I-485 Application. As such, this Court has exclusive jurisdiction to review Defendant USCIS’ denial of

Plaintiff's I-485 Application under the APA. Accordingly, this Court should deny Defendant's motion to dismiss."

The government will file its motion later today, December 1, 2021. *See* ECF No. 35. The parties respectfully request that the Court approve the following schedule for the remainder of the briefing on the motion:

- Plaintiffs' opposition: January 11, 2022
- Government's reply: February 1, 2022

I thank the Court for its consideration of this letter.

Respectfully submitted,

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cc: Counsel of record (via ECF)

Application GRANTED.

Defendants' motion to dismiss is due no later than today, **Wednesday, December 1, 2021**. Plaintiff's response in opposition is due no later than **Tuesday, January 11, 2022**. Defendants' reply in support is due no later than **Tuesday, February 1, 2022**.

Discovery in this matter is hereby STAYED pending resolution of the motion to dismiss. The initial pre-trial conference, currently scheduled for Friday, December 10, 2021 at 11:00 A.M. is adjourned *sine die*. The requirement that the parties file pre-conference submissions by no later than Thursday, December 2, 2021 is vacated. The Court will reschedule the initial pretrial conference after the Court has resolved the motion to dismiss.

SO ORDERED.



Date: December 1, 2021

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE